# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 5407 of 1986

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.A.PUJ**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**L.V.KATARIA & 14 - Petitioners**
**Versus**
**GUJARAT SHEEP & WOOL DEVELOPM ENT CORPORATION. & 14 - Respondents**

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**Appearance :**
MS MAHROOK N. KERRAVALA WITH MR G RAMAKRISHNAN for Petitioners.
MR CHETAN K PANDYA for Respondents.

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**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 15/02/2006**

**ORAL JUDGMENT**

1.The petitioners, in all 14 + one union, have filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the order and decision of the respondent No.1 – Corporation keeping in abeyance the orders granting promotions and advance increments by the Ex-Managing Director to the petitioners. The petitioners have also prayed for the direction to the respondent No.1- Corporation to pay to the petitioners as per the orders granting promotion or advance increments by the then Managing Director from the date the same has been kept in abeyance and the same is due.

2.During the pendency of this petition, the petitioner Nos. 1,2,4,5,6,7,8,9,11,12 and 13 have moved civil application before this Court for deletion of their names in view of the

offer made by the respondent No.1–Corporation. The respondent No.1 – Corporation in its Board of Directors 92nd meeting held on 26.01.1992 has considered the proposal of Managing Director regarding advance increments / promotions given during October 1983 by Ex-Managing Director Shri S. Tripathi and after considering the report of Ex-Managing Director Shri G.R. Ravat and after discussion, it was decided to make an offer to the concerned employees as under :-

*[A] In the cases of 8 employees where given three increments by the Ex-Managing Director Shri S. Tripathi to offer one increment with effect from 1983;*

*[B] In the cases of five employees who were given promotion, only four be accepted while the case of Mr. L.V. Kataria be rejected. The promotion be given with deemed date from 1983 but no arrears. The promotion will be effecting on the date the employees start working on the promoted post.*

It was also made clear that the said decision was subject to the employees agreeing to withdraw their cases in the High Court and the

Managing Director was authorized to do the needful in the matter.

3.Pursuant to the aforesaid Resolution dated 26.01.1992, the above referred petitioners have accepted the said offer and withdrew their names from the present petition. However, the petitioner No. 3 i.e. Mr. L.V. Kataria has not withdrawn since no proposal was offered to him. The petitioner No. 10 Mr. J.N. Dave and petitioner No. 14 i.e. Mr. J.H. Raval have not accepted the said proposal and accordingly, qua them the present petition was admitted.

4.Ms. Mahrook N. Kerravala with Mr. G. Ramakrishnan, learned advocates appearing for the petitioners have submitted that so far as petitioner No. 3 is concerned, he is ready and willing to accept the promotion as and when the vacancy arises. They have further submitted that the petitioner Nos. 10 & 14 are ready to

accept the offer which was made to them in the year 1992 and they would accept the one advance increment on the same line as it was offered to the other petitioners and they are ready and willing to withdraw the present petition as stipulated in the aforesaid Resolution of the Board of Directors of the respondent No.1-Corporation.

5.Mr. Chetan K. Pandya, learned advocate appearing for the respondent – Corporation has, however, submitted that the Ex-Managing Director has awarded three increments contrary to the rules and regulations of the Corporation. He has further submitted that the offer was made in the year 1992 and those who have accepted the said offer, one advance increment was given to them. It is now not open for the petitioners to claim the said parity on the basis of other petitioners. He has further submitted that the respondent No. 1

- Corporation is facing financial crisis and the Corporation has also offered voluntary retirement scheme and 50% staff is required to be relieved. Even if one advance increment is given to the petitioner Nos. 10 & 14, it would increase the financial liability to the extent of more than Rs. 1,30,000/- which the Corporation is not in a position to discharge. He has, therefore, submitted that since the petitioner Nos. 10 & 14 have not exercised their option in 1992, the same is not available to them and the petition qua them deserves to be dismissed.

6.After having heard learned advocates appearing for the respective parties and after having gone through their pleadings and the documents attached with the petition as well as affidavit-in-reply, the Court is of the view that the Ex-Managing Director has taken the decision in October 1983 and offered three

increments as well as promotions to the employees and the said decision was kept in abeyance. For 8 years, no decision has been taken by the respondent No.1 – Corporation. It is only on 26.01.1992, the Board of Directors of the respondent No.1 - Corporation has taken the decision and offered one increment to the petitioners on the condition that the petitioners would withdraw their case before the High Court. It is true that in 1992 along with other petitioners, the petitioners No. 10 & 14 have not accepted the said proposal. The fact, however, remains that subsequently they have realized and now they agreed to accept the said proposal. The Court is, therefore, of the view that there is no justification in denying the said benefit to the petitioner Nos. 10 & 14. Even otherwise, the Resolution dated 26.01.1992 is silent as to within how much time, the offer was to be accepted. It only says that the petitioners should withdraw their

case from the High Court. It is nowhere mentioned in the said Resolution that within how much period, the petition was required to be withdrawn. Since the petitioner Nos. 10 & 14 have shown their willingness to withdraw their cases, the Court is of the view that they should also be given the similar treatment which was given to other petitioners. Looking to the financial position of the respondent No.1 – Corporation, at the most, the Court may direct the Corporation to give the amount of one increment in suitable installments.

7.Taking overall view of the matter and considering the entire facts and circumstances of the case, the respondent No.1 – Corporation is hereby directed to give one advance increment to petitioner Nos. 10 & 14 as it was given to other petitioners pursuant to the Resolution dated 26.01.1992. It is, however, made clear that the amount of one advance

increment should be paid to them without interest and the said amount be paid to them in six equal monthly installments commencing from March, 2006. The amount of each installment should be paid to them along with their salary for the respective month. So far as petitioner No. 3 is concerned, he is agreeable to the proposal that as and when the vacancy arises, the promotion should be given to him and hence, on this basis, the respondent No. 1 – Corporation is directed to give promotion to the respondent No. 3 as and when the vacancy arises in future.

8. In view of the aforesaid directions and observations, the petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

**[K.A. PUJ, J.]**

**S***avariya*